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QUESTION OF THE VIOLATION OF HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS IN ANY PART OF THE WORLD, WITH PARTICULAR REFERENCE TO COLONIAL AND OTHER DEPENDENT COUNTRIES AND TERRITORIES

Note verbale dated 17 November 1995 from the Permanent Mission of the Republic of Iraq to the United Nations Office at Geneva to the United Nations Centre for Human Rights

The Permanent Mission of the Republic of Iraq to the United Nations Office at Geneva presents its compliments to the Centre for Human Rights and has the honour to transmit herewith the comment of the Government of Iraq on the first periodic report on the situation of human rights in Iraq, which was submitted by Mr. Max van der Stoel, Special Rapporteur of the Commission on Human Rights (document E/CN.4/1996/12).

The Permanent Mission of the Republic of Iraq should be grateful if the Centre for Human Rights would have circulated this comment as an official document of the fifty-second session of the Commission on Human Rights, under agenda item 10.

Preliminary reply of Iraq to the first periodic report submitted by the Special Rapporteur to the fifty-second session of the Commission on Human Rights in document E/CN.4/1996/12

1. The competent Iraqi institutions have studied the first periodic report on the so-called "situation of human rights in Iraq", submitted by Mr. van der Stoel, the Special Rapporteur, to the fifty-second session of the Commission on Human Rights in document E/CN.4/1996/12, in which the Special Rapporteur claimed to have analysed the Amnesty Decrees Nos. 61 and 64 promulgated by the Revolution Command Council in Iraq and in which he claimed to have reached the conclusion that the said decrees "demonstrate considerable shortcomings in terms of their provisions and in terms of the general context of their promulgation".

In this connection, we wish to reply as follows to his allegations:

2. In paragraph 6 of the report, Mr. van der Stoel stated that: "The content of Decrees No. 61 and No. 64 may be best appreciated by what they do not constitute: they do not constitute abrogation of any of the laws ... they do not constitute conferral of pardons upon any of those convicted or sentenced ... [or] for the very many who are held in detention." Although an analytical approach would confirm the fact that these two decrees embody important provisions, the Special Rapporteur does not wish to evaluate them, preferring to evaluate only what they do not constitute, thereby demonstrating bad faith and politically motivated prejudice by disregarding the humanitarian, social and educative aspects of these two decrees. It is self-evident that an analytical approach that takes into consideration particular aspects and deliberately disregards others lacks the requisite analytical objectivity in so far as it expresses a subjective and selective standpoint. Consequently, no reliance can be placed on the conclusions that it reaches.

3. In the same paragraph, the Special Rapporteur states that the two decrees "do not constitute abrogation of any of the laws under which offences ... have been established". This is not surprising, since the promulgation of amnesty decrees in respect of offences committed in any country of the world does not necessarily signify abrogation of the laws and decrees in force which deal with the subject-matter of those offences and which were originally promulgated to protect the security of the country and its population. It is well known that amnesty decrees are promulgated for humanitarian, social, educative and other reasons when the legislature finds that there is justification for the promulgation of such decrees and that the time is appropriate therefor. As far as Iraq is concerned, the purpose of the promulgation of a number of enactments and decrees, in which the legislature felt obliged to increase the penalties for several offences that are highly prejudicial to the security and safety of citizens and society, was to constitute a deterrent and reduce the incidence of those offences. However, the Government of Iraq is eager to ensure that a citizen who has misguidedly transgressed against his society is given an opportunity to examine and rectify his conduct so that he can become an upstanding citizen in his own and his country's interest. This was the reason for the promulgation of the amnesty decrees, the humanitarian, social and educative aspects of which no just person can disregard.

4. In the same paragraph, the Special Rapporteur also states that the two decrees "do not constitute conferral of pardons upon any of those convicted or sentenced". This is untrue, since the amnesty decrees are really aimed at those persons. The Special Rapporteur further states, in the same paragraph, that the two decrees "do not constitute amnesties ... for the very many who are held in detention ... and have not yet been convicted or sentenced". First of all, the number of such detainees is not as large as the Special Rapporteur seems to imagine. Moreover, until the statutory judicial examination of those detainees has been completed, they cannot be referred to the courts for judgement. Accordingly, it is only natural that the provisions of those two decrees do not apply to them. Nevertheless, paragraph II of Decree No. 64 calls for the halting of the legal measures taken against the persons covered by its provisions and this applies to all measures taken against detainees at the stages of examination and trial; these detainees have been released. Under paragraph III of this decree, no legal measures can be taken against perpetrators of political offences who had not been detained prior to the promulgation of the decree. Although this provision has not had an immediately evident effect, it was implemented by the authorities concerned, who halted the proceedings taken against persons covered by the terms of this paragraph.

5. With regard to the statement made in paragraph 6 of the Special Rapporteur's report that "anyone benefiting from the amnesties could well be subject to the same punishments again. In fact, paragraph IX of Decree No. 61 makes this explicit", the content of that paragraph emphasizes the principle of "recidivism", which is a legal principle incorporated in all penal legislation throughout the world, including article 139 of the Iraqi Penal Code. Accordingly, from the legal standpoint, that paragraph is not vitiated since it merely reaffirms that legal principle.

6. In paragraph 7 of the report, the Special Rapporteur refers to the wording of the decrees, stating that they "both contain preambular provisions which heavily prejudice application of the Decrees" since they refer to the address delivered by the President of the Republic on the occasion of the twenty-seventh anniversary of the 17 July 1968 Revolution, their purpose being to enable persons who had deviated to rectify their errors and return from the abyss of deviationism to the firm base of virtue and patriotism. Accordingly, the Special Rapporteur concludes that "application of the amnesties is conditioned upon belief and behaviour in conformity with the tenets of the Ba'ath Party". This is a false conclusion, for which the Special Rapporteur submits no substantiating evidence. If it had been the case, this would have been mentioned, without reservation, in the decrees. Patriotism is not confined to members of the Arab Ba'ath Socialist Party; its concepts are embodied in the vast majority of the Iraqi people, whether Arabs, Kurds or other ethnic minorities.

7. In paragraph 8, the Special Rapporteur states that "paragraph VI [of Decree No. 61] gives advantage to those who have 'obtained an understanding of the revolutionary course of action'". In actual fact, this paragraph does not confer any privilege on persons who have obtained an understanding of the revolutionary course of action. All the persons covered by the provisions of this paragraph were released, without any privilege being conferred on any convicted person, since all the persons covered were obliged to attend

religious courses in their respective confessions under the supervision of the Ministry of Religious Endowments. All the persons covered by the provisions of this paragraph attended the courses and passed the subsequent test with a success rate of 100 per cent, without any discrimination or arbitrariness.

8. In the same paragraph, it is stated that "paragraph VIII, subparagraph 3, effectively conditions exemption from applicable amputation decrees upon repentance", although this paragraph in no way refers to such a condition.

9. In paragraph 8 of his report, the Special Rapporteur, while evaluating paragraph II of the Revolution Command Council Decree, states that "reductions of sentences will apply only in such cases where the relatives of those imprisoned will 'undertake to ensure their good conduct'". In this connection, we wish to point out that this paragraph refers to detainees and not prisoners. These detainees are juveniles under 18 years of age who, under the terms of the Convention on the Rights of the Child, are regarded as children. According to that Convention, children must enjoy special care and protection and their best interests must be considered in all proceedings concerning them, regardless of whether such proceedings are conducted by public or private social welfare institutions, the courts or other bodies. The importance of this paragraph lies in the fact that the guardians of children are placed in a position of responsibility and are urged to play their role by helping to rectify and guide the conduct of juveniles. The social and educative importance of this is evident and it is fully consistent with the provisions of article 5 of the Convention, which refers to the responsibilities, rights and obligations of parents to provide their children with appropriate guidance and counselling, as well as article 9 of the Convention under which States parties undertake not to separate a child from his or her parents against their will.

10. In paragraph 9 of the report, the Special Rapporteur refers to the arbitrariness resulting from the provisions of paragraph VI of Decree No. 61 in so far as it "stipulates benefits for those 'who have memorized four of the longer chapters of the Holy Qur'an'". The paragraph in question indeed makes provision for an amnesty for convicted persons who have memorized four of the longer chapters. However, this formula is applied in a number of Islamic States, since its application has proved highly beneficial in consolidating the foundations of society and it has been found to have a significant effect in reforming the conduct and lifestyle of delinquent individuals. A committee comprising experts from the government departments concerned was formed to specify the most relevant chapters and verses, most of the provisions of which related to the offences committed by the male and female inmates of reform institutions. Qur'anic study groups were formed in the prisons to help the inmates to memorize the texts. The purpose of this process should be obvious to any student of the law and judicial matters, particularly if he believes that punishment is a means of deterrence and reform rather than an end in itself. In fact, this process encouraged convicted persons to return to the Holy Qur'an and the teachings of the Islamic religion in order to change their mentalities through much-needed Qur'anic study with a view to the development of a religious conscience that would act as a deterrent in the future after they had benefited from the Amnesty Decree.

11. In paragraph 10 of the report, the Special Rapporteur draws "special attention to the many conditions and exclusions contained in the Decrees", even though the two decrees in question exclude only some dishonourable offences of a despicable nature, such as espionage, theft of State property, embezzlement, sodomy and rape.

12. In paragraph 10 of the report, the Special Rapporteur also indicates that the decrees do not apply to "large numbers of persons [who] remain detained in Iraq", although paragraphs II and III of Decree No. 64 call for the halting of investigatory measures against persons detained pending examination and trial, as well as the halting of all prosecution proceedings against persons covered by the provisions of the amnesty.

13. In paragraph 11 of the report, the Special Rapporteur indicates that paragraphs II and III of Decree No. 64 are discriminatory in so far as they do not apply to non-nationals. In this connection, we wish to point out that the decree in question forms part of a series of amnesty decrees that also apply to non-Iraqis and cover all offences, including those of a political nature, in accordance with recognized rules and principles of criminal law and jurisprudence. Other such decrees are Nos. 43, 60 and 69 of 1995. (See the annex to this reply.)

14. In paragraph 12 of the report, the Special Rapporteur states that "it is to be noted that persons convicted of 'espionage' are excluded from application of the Decrees. This is a particularly important exclusion because so many of the laws of Iraq refer to 'espionage' and because that crime, as defined therein, applies to a wide variety of behaviour." In this connection, we wish to point out that article 8 of the implementing regulations for Decree No. 61 define the crime of espionage as covering the offences referred to in articles 158, 159 and 164, paragraph 1, of the Penal Code and article 48, paragraph 2, of the Military Penal Code. These offences concern collusion and intelligence contacts with the enemy. In fact, all the persons convicted of offences prejudicial to the external and internal security of the State, with the exception of those convicted under the terms of the above-mentioned articles, were covered.

15. In part II of the report, the Special Rapporteur speaks of the context of the decrees and states that the import of the decrees can only be fully understood in the light of the legal and political situation which prevails in Iraq. In paragraph 15 of the report, he alleges that the testimonies received indicated that persons who returned to Iraq in order to benefit from the above-mentioned amnesty decrees were subject to surveillance and interrogation and, in some cases, were convicted or disappeared. We do not know why the Special Rapporteur did not give an actual example to substantiate these allegations, particularly since he claims to have testimonies to that effect. In this connection, we wish to affirm that the Special Rapporteur's allegations are mere fabrications constituting a desperate attempt to divest the latest amnesty decrees of the positive legal and patriotic aspects of their provisions. We wish to affirm that all those who benefited from the above-mentioned recent amnesty decrees returned to the country in a natural manner and resumed their work normally, without any harassment such as that which the Special Rapporteur erroneously imagines.

16. With regard to his allegation, contained in paragraph 16, concerning a "disconcerting provision" in Decree No. 64 to the effect that those amnestied were required to report to the competent authorities in order to benefit from the decree, thereby facilitating subsequent surveillance, the evil intent underlying that allegation should be evident to any impartial observer since it implies deliberate incitement not to take advantage of that opportunity, thereby depriving the persons concerned of an opportunity that would certainly help to consolidate stability and strengthen national unity. The Special Rapporteur seems to be seeking to ensure that this aim is not achieved, since no one could reasonably be expected to benefit from the amnesty granted under the terms of those two decrees without reporting to the competent authorities; otherwise, how would it be possible to keep track of the legal proceedings and drop the cases against the persons benefiting from those decrees and, for example, how would it be possible for a person outside the country to return without reporting to the competent Iraqi authorities abroad or without passing through official ports of entry? It seems evident, therefore, that the Special Rapporteur is making random accusations, without a careful study of the matter, with the sole aim of harming the Government of Iraq.

17. In the light of the above, we feel justified in wondering whether it would not have been more appropriate for the Special Rapporteur, if he had been in any way just or objective, to commend and encourage that step, even if it fell short of his full expectations, and to request that the Government of Iraq take further measures to strengthen human rights in Iraq, instead of fabricating concepts and pretexts to detract from the importance of those two decrees.

REVOLUTION COMMAND COUNCIL DECREES

Decree No. 43 of 25 Dhu-l-Qa'adah 1415 A.H.,
corresponding to 25 April 1995

In accordance with the provisions of article 42, paragraph (a), of the Constitution,

The Revolution Command Council hereby decrees as follows:

I. Iraqi prisoners who have served twenty-five per cent (25%) of their sentences shall be exempted from the remaining periods of their sentences.

II. Iraqi detainees who have served twenty per cent (20%) of their sentences shall be exempted from the remaining periods of their sentences.

III. The provisions of this Decree shall not apply to persons who have been convicted of dishonourable offences or murder, nor shall they apply to repeated offenders.

IV. This Decree shall enter into force with effect from the date of its promulgation.

Saddam Hussein
Chairman of the Revolution
Command Council

Al-Waqa'i al-Iraqiya (Official Gazette) No. 3561

Decree No. 60 of 9 Rabi I 1416 A.H.,
corresponding to 5 August 1995

Presidential Decree

In accordance with the provisions of article 57, paragraph (c), of the Constitution,

We hereby decree as follows:

I. The Egyptian prisoners and detainees convicted of offences involving assault, bribery, refusal to provide the authorities with information, insults directed against the symbols of the nation, the people and the country or the offences specified in the Residence of Foreigners Act No. 148 of 1987 shall be exempted from the remaining periods of their sentences and shall be released from prison immediately unless they have been convicted on other charges.

II. The legal proceedings instituted against Egyptians accused of the offences specified in paragraph I above shall be halted and such persons who are held in custody shall be released unless they are being held on other charges.

III. This Decree shall enter into force with effect from the date of its promulgation.

Saddam Hussein
President of the Republic

Al-Waqa'i al-Iraqiya (Official Gazette) No. 3576

Decree No. 69 of 1 Rabi II 1416 A.H.,
corresponding to 27 August 1995

Presidential Decree

In accordance with the provisions of article 57, paragraph (c), of the Constitution,

We hereby decree as follows:

I. The Egyptian prisoners and detainees who have been convicted of economic offences, acts of theft as defined in article 446 of the Penal Code or acts of attempted theft as defined in article 446, paragraph 31, of the Penal Code shall be released from prison immediately unless they have been convicted on other charges.

II. The legal proceedings instituted against Egyptians accused of the offences specified in paragraph I above shall be halted and such persons who are held in custody shall be released unless they are being held on other charges.

III. This Decree shall enter into force with effect from the date of its promulgation.

Saddam Hussein
President of the Republic